



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

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OBMT Board Meeting Agenda

May 13, 2011

Central Oregon Community College

Boyle Education Center Board Room

2600 NW College Way

Bend OR 97701

DAY ONE

Attendance

Board Members:

Kathy Calise, Chair, Public Member

Heather Bennouri, LMT, Vice Chair

Crystal Collier, LMT

David Fredrickson, LMT

Melanie Morin, LMT

Craig McMillin, Public Member

Staff:

Kate Coffey, Executive Director

Diana Nott, Compliance Coordinator

Public: Stephanie Manriquez Deby Grant Genna Southworth

Call to Order

Calise called the meeting to order at 10:02 am. Role call was performed. **Bennouri, Collier, Fredrickson, McMillin, Morin and Calise** were present.

There was an introduction of each Board member and Board staff, as well as an introduction of attendees.

1) Approve Agenda – There was discussion of deferring item 6b, Mission Statement and Board Goals, to the Saturday work session. **Bennouri** moved to approve the agenda as amended. **Second the Motion: Fredrickson** **In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise.** **Opposed: None.** **Motion carries.**

2) Q & A with the Board – **Manriquez** asked the Board if they would return to Bend the following year. **Calise** explained that the Board is currently reduced to one traveling Board meeting per year, as opposed to the previous practice of holding two traveling Board meetings per year. The Board would likely return to Bend in the future, though it was uncertain when.

3) Approve Minutes of April 11, 2011 – **Bennouri** moved to approve the minutes of April 11, 2011 as presented. **Second the Motion: Collier.** **In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise.** **Opposed: None.** **Motion carries.**

4) Director's Report

a) **Finances** – Coffey provided the Board with a budget status report. There was a discussion on spending the remainder of finances. There is a savings due to the current vacancy of the Board Compliance Manager. Coffey suggested that the Board consider use of that savings in the areas of need. Such considerations might be technology upgrades for the office and obtaining all of the netbooks for paperless Board meetings. McMillin asked what other options might be. Coffey indicated that the Board could refill the Compliance Manager position immediately, though she suggested that the Board consider if the management position in compliance is truly necessary or if two staff in compliance is necessary given the current workload. The Board could also consider contracting for a consultant that could accomplish some of the work necessary for review and consideration of scope of practice matters and studies in bodywork vs. massage. Calise indicated that she feels that technology is an important consideration. She would like to see the Board office infrastructure move towards supporting online renewals. McMillin asked for a list of potential options. Coffey reported that current considerations are: filling the compliance manager position, hiring a consultant, offset new fees implemented with changes in legislative mandates, improving technology and saving the money. Fredrickson stated that he is concerned that the Compliance Manager position has been a pivotal position up to this point and questioned the rationale to remove the position. Coffey indicated that there may be difficulty in refilling the position as a manager, given that the Governor's office, the legislature and the unions are voicing concern over span of control. The agency may find it difficult to justify a ratio of two managers to three staff persons. She suggested the position and work load be evaluated before filling the position. She has not started a recruitment at this time. McMillin asked what amount is available for spending. Coffey reported that there is a current savings of approximately \$6,000 per month for 2 ½ months. The technology upgrade for the entire office would be approximately \$4,000. She clarified that she is not asking to spend the full amount. Morin indicated that she would like to move forward with obtaining the remaining netbooks for paperless Board meetings. Coffey thanked the Board for their input, as it is helpful to determine the direction and desire of the Board.

b) **Legislative Updates** – Coffey provided the Board with a list of bills that have a potential to affect the OBMT. The list has decreased in size, as many bills have been dropped off through the legislative process.

SB 41 - Establishes deadlines for responses to public records requests. No fiscal impact to OBMT. A public hearing and work session was held April 13, 2011.

SB 96 – Expands the list of professional regulatory boards subject to workforce reporting. There is a potential fiscal impact to the Board. This bill has passed, though the previous fiscal impact is expected to be reduced.

SB 97-A – Required additional health professionals to require cultural competency as CE. (OBMT is now included.) There is no expected fiscal impact to the OBMT. This bill has passed the Senate and has been forwarded to the House Healthcare Committee.

SB 454-A – Exempts certain practitioners from regulation of the OBMT. There is a potential fiscal impact of \$21,150 per biennium. This bill has passed both the House and the Senate and is expected to be signed into law by the end of May.

HB 2155 – The OBMT may approve classes taken at an accredited college or university as certified classes. No fiscal impact to the OBMT. This bill has passed both the House and the Senate and is expected to be signed into law by the end of May.

HB 2381 – Removes some of OBMT's semi-independence. Amended fiscal impact of \$2,521 per biennium. This bill has passed both the House and the Senate and is expected to be signed into law by the end of May.

There was some discussion on the impact and immediate needs as a result of SB 454 passing. The bill has an emergency clause and there will be quite a lot of work to do for a January 1, 2012 implementation. The short timeframe for results is a key reason to consider hiring a consultant to address those needs in a timelier manner, as opposed to relying completely on committee members and committee coordination.

c) **General Updates - Coffey** reviewed the current Board action log with the Board members.

Technology Policy – This continues to be worked on. In addition, **Coffey** will be looking into the viability of video conferencing. She will research upgrades and video conferencing and return to the Board with the cost estimates. **Bennouri** indicated that she felt there were some challenges in working with the paperless format, as there are some processes that work better for her when she has access to printed information.

Paperless Board Meetings – **Coffey** inquired if it was the desire of the Board to have her purchase the remainder of the netbooks. The Board members said yes.

Impaired Professionals – This item will be covered in more detail at the Saturday work session.

Schools Outreach – **Coffey** reported that she met with the two schools in Bend on Thursday. She believes that it went well and that the students were appreciative of the information that was provided to them. She will work on outreach to all Oregon schools.

Internet Banking Policy – This is being worked on. **Coffey** believes it will be completed by July.

Investigator Contracts – **Coffey** is working on a Request for Quote for the next biennium.

5) **Committee Updates -**

a) **Education Committee/ Scope of Practice Committee - Calise** reported that Board staff had put together a resource binder for this committee and thanked them for their efforts. **Fredrickson** indicated that a report of the last meeting had been provided to the Board in their packet. He reported that it was a productive meeting. Lisa Garofalo worked at attempting to coordinate the Oregon Department of Education standards as goals as the committee moves forward with revisions to the model curriculum and focus on competencies. He reported that Garofalo did a fine job bringing those two items together to provide an apt platform for discussion. There is a lot of work to be done in a short period of time. The previous meeting focused on page one of the model curriculum. This covers professional standards. They will continue to go through the model curriculum page-by-page. Their next meeting is June 3, 2011. Overall, **Fredrickson** is very impressed with the work of this committee. He does have some concern over the make up of the committee. He also finds the resource binder to be very helpful.

b) **Rules Committee – Bennouri** reported that it was her understanding that historically, this committee was to serve in reviewing new rules for consistency with statutory authority and rules and laws housekeeping, when directed. It is felt that this committee needs more clarity in direction and desire of the Board. There was some concern over peer supervision, but the group was unsure how the Board wanted them to proceed. Should they be drafting rule language or reviewing proposed language? It was unclear how the passage of SB 454 would affect the direction and work of this committee. There was discussion on having an all-committee meeting, which might include each committee chair, the Board liaison and another committee participant. This committee will meet again on June 20, 2011. If an all-committee meeting should be required prior to their next meeting, they have chosen their committee participants. **Fredrickson** indicated that he would be interested in hiring an interim coordinator or facilitator to manage this process. **Calise** indicated that all committees are asking for direction and that she recognizes that the Board needs to be better about providing that direction. This will be discussed in greater detail at the Saturday work session.

c) **Multiple Discipline Task Force – Morin** reported that this Board has been on sabbatical and will meet again on June 3, 2011. At that time, they hope to have action items or direction from the Board. They are anxious to learn of the outcome of SB 454 and how the Board will address language and desired changes. **Calise** indicated that each participant has been asked to return in June with information from their particular practices on educational standards and disciplinary processes.

Bennouri moved to take a brief recess. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.** The Board took a brief recess at 10:45 am and returned at 11:02 am.

6) Board Business

- a) **Vice Chair Discussion** – In November, the Board discussed having the Chair position serve for two years and having the Vice Chair position serve for one year. This would allow the Board to have two options for Chair, when the time came for a new appointment. At that time, no other Board members expressed interest in serving as Vice Chair. **Bennouri** was left as Vice Chair and the discussion was deferred. **Collier** believes that this is a good system to put into place. **Bennouri** indicated that she was willing to continue to serve as Vice Chair, but she encouraged others to consider stepping into the role. **Coffey** and **Calise** met with Kendall Clawson with the Governor's Office, and received feedback on the role of the Chair and the role of the Executive Director. Clawson will attend the June Board meeting to discuss this in further detail with the entire Board. In short, the Chair is expected to be the leadership arm of the Board and to guide the work of the Executive Director. Communications should start with the Board Chair, as opposed to starting with the Executive Director. The Governor's Office expects the Board Chair to be a leader. **Bennouri** expressed concern over the logistics that go along with service as Board Chair and possibly not being able to meet all of the requirements, including attendance at legislative hearings, rules hearings or other items that require short notice. **Fredrickson** indicated that he would be willing to serve the Board as Vice Chair. **Bennouri** moved to appoint **Fredrickson** as the Vice Chair. **Second the Motion: McMillin** **In favor: Bennouri, Collier, McMillin, Morin and Calise.** **Abstained: Fredrickson** **Opposed: None.** **Motion carries.** **Fredrickson** will serve as Vice Chair for the remainder of 2011.
- b) **Mission Statement & Board Goals** – This item was deferred to the Saturday work session.
- c) **Internal Cavity Massage Policy** – The Board was presented with a revised Internal Cavity Massage Policy. **Bennouri** moved to accept the revised Internal Cavity Massage Policy. **Second the Motion: Morin** **In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise.** **Opposed: None.** **Motion carries.**
- d) **Breast Massage Policy** – The Board was presented with a revised Breast Massage Policy. **Collier** moved to accept the revised Breast Massage Policy. **Second the Motion: Fredrickson** **In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise.** **Opposed: None.** **Motion carries.**
- e) **Best Practices Document** – The Board reviewed the draft Best Practices document. There was discussion on having the specific sections each have a required portion and a suggested portion. This item will be returned to the committee for revision. **Bennouri** will work with Garofalo on this item.
- f) **Exam Consideration Request** – The Board received a request from Manriquez about considerations with the Oregon Practical Examination.

Manriquez Thanked **Coffey** and **Nott** for presenting to the students the prior day. They were excited, happy to ask questions and thought it was a positive experience. It is her hope that the Board continues with the school outreach, as it is important for the students to understand the Board and the examination.

She thanked the Board for coming to Bend and for all of their hard work.

She indicated that she would like the Board to address the scoring process if the Oregon Practical Examination as well as the kinesiology portion of the exam. It is her understanding that the exam is designed to assess client communication, client consent and client safety. She feels that the exam has evolved and changed and that it is an excellent tool.

Currently, a candidate is required to obtain a minimum of 70% in each category of the exam in order to pass. Prior to 2007, the Board allowed passage of the exam with a 70% overall score and no minimum score for each category. She would like the Board to revisit this item and consider a 70% over all, with a minimum of 65% in each category, as passage of the Oregon Practical Examination.

It was noted that Manriquez's school currently has a 100% pass rate for the Oregon Practical Exam. She likes the evolution of the exam. It is now less subjective and more objective and is clearly managed. Feedback from candidates, whether they have passed or failed, is positive and noted that the examiners are professional.

In addition, she would like the Board, or the exam committee, to consider how the kinesiology portion of the exam is assessed. She feels that the memorization of muscle locations, origins, insertions and actions is covered well in the massage program and that the current kinesiology requirements only reflect the candidate's ability to demonstrate memorization and that the written exam already assesses the ability to memorize the information. She believes that the exam should be modified to assess demonstration of practical applicability of the knowledge. She suggested demonstration of stretching and range of motion and demonstration of application of the knowledge in a safe manner.

Fredrickson indicated that he is currently in favor of the separate categorical 70% minimum requirement to achieve minimal competency, and thinks that there could be pieces potentially added to strengthen the existing exam.

There was discussion on how to address the desire for demonstration of competency-based skills as opposed to knowledge-based skills. The Board determined that there would need to be further discussion on the subject.

Manriquez thanked the Board for their consideration.

7) **Boarderline** – The Board will continue to make a list of topics for newsletter items. **Coffey** reported that the Board office has received numerous positive comments from stakeholders on the content and quality of the newsletter, as well as the variety of authors.

8) **Public Comment** - Opportunity for the public to address the Board.

Deby Grant asked that the Board think about what the Practical Exam is accomplishing. Students are nervous, they are in an unfamiliar room with three other people that they don't know, they don't have their own equipment, nothing is familiar, they are video and audio taped and the examiners are not allowed to correct them if they don't understand what is being said. She doesn't believe that it provides any level of safety and only shows that someone is able to perform under pressure. She would personally like to see the Board move to involving the schools in setting key standards and making the schools accountable to competency. She feels that the schools outreach is helpful and reduces nervousness, but does not believe the exam is truly testing the skills of the student.

There was discussion amongst attendees and Board members on the jurisdiction of the Board over schools. The primary authority over Oregon massage schools is the Oregon Department of Education.

Genna Southworth believes that the Board does have the ability to mandate standards through the model curriculum. She indicated that Oregon Department of Education does not review content of curriculum. She is interested in the Board taking a stronger role in the review of curriculum and teaching designs. She wants to work with the Board on the model curriculum and is deeply appreciative of the work Lisa Garofalo has done in preparing options for the Oregon Department of Education to consider. It is her desire to see a way for the Board to set standards for schools and oversight for failing to meet those standards.

Calise indicated that she hopes that the new model curriculum will set a higher standard. That is the starting point. The Board recognizes that there is a problem. She indicated that it has been amazing to see the overall pass rate of the exam increase. All schools have made improvements.

Bennouri moved to take a break at 12:28 pm. **Second the Motion: Morin** In favor: **Bennouri, Collier, Fredrickson, McMillin, Morin and Calise.** **Opposed: None.** **Motion carries.** The Board returned from break at 1:02 pm.

9) EXECUTIVE SESSION

The Oregon Board of Massage Therapists will now meet in executive session, pursuant to ORS 192.660(2)(f) to review, discuss, and consider mediation communications that are confidential and exempt from disclosure, pursuant to ORS 192.502(9), 36.224(6), 36.220(1)(a), and OAR 334-001-0051(6). The Board may also consider and discuss in executive session information obtained as part of an investigation of a licensee or applicant, pursuant to ORS 192.660(2)(k). The Board may also review, consider, and discuss written legal advice provided by the Department of

Justice that is confidential or privileged and exempt from disclosure under ORS192.502(9) and ORS 40.225 and other applicable authority.

Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of executive session, the Board will return to open session and welcome the audience back into the room.

The Board entered into Executive Session at 1:03 pm returned from Executive Session at 3:13 pm.

10) Executive Session Action

- a) **Case 801 – Bennouri moved** to revoke the LMT's massage license for violations of the following statutes and rules: ORS 687.0814(1)(f) and OAR 334-040-0010(4), LMT has been convicted of a crime that bears a demonstrable relationship to the practice of massage; OAR 334-030-0005(1)(b), LMT shall act within the context of professional practice standards, code of ethics and relevant statutes and regulations; OAR 334-030-0005(1)(c), LMT shall consider factors related to safety, effectiveness and cost in planning and providing care and services; OAR 334-030-0005(1)(d), LMT shall represent all aspects of his or her professional capabilities and services honestly and accurately; OAR 334-030-0005(2)(a), LMT shall be accountable to his or her clients for the quality and effectiveness of care and services and for creating the basic conditions and boundaries necessary to foster safety and trust in the client-professional relationship; OAR 334-030-0005(2)(b), LMT shall plan and provide care and services to the best of his or her abilities, in partnership with the client, based on client needs; OAR 334-030-0005(2)(c), LMT shall endure that their actions with a client are based on understanding and implementing the core values of caring, respect, compassion, appropriate boundaries and appropriate use of personal power; OAR 334-030-0005(3)(a), LMT shall use critical reflection in the assessment of professional and clinical situations for the development and provision of care and services; and OAR 334-030-0005(3)(c), LMT shall modify and adapt professional practice activities, consistent with current professional standards and practices, in response to client needs, advancing knowledge and research, and social expectations. **Second the Motion: Collier In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- b) **Case 907 – McMillin moved** to renew Licensee's massage license with the removal of all previous restrictions except that Licensee shall continue to regularly attend AA or other 12-step program and maintain regular contact with his sponsor for one year. **Second the Motion: Morin In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- c) **Case 1068 – Bennouri moved** to emergency suspend the LMT's massage license, pending the outcome of her criminal matter. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- d) **Case 1074 – Bennouri moved** to close the case as no violation found. **Second the Motion: Fredrickson In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- e) **Case 1076 – Fredrickson moved** to issue a Notice of Proposed Action for one violation of ORS 687.021(1), practicing or purporting to be in the practice of massage without a license, for a total civil penalty of \$500. **Second the Motion: Bennouri In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- f) **Case 1123 – Bennouri moved** to issue a Notice of Proposed Action for one violation of ORS 687.021(1), practicing or purporting to be in the practice of massage without a license; and one violation of ORS 687.021(2)(a), advertising for massage without a license; for a total civil penalty of \$1,500 and forward to the Oregon Board of Cosmetology. **Second the Motion: Collier In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**
- g) **Case 1127 – Bennouri moved** to issue a Notice of Proposed Action for one violation of OAR 334-010-0025(3), A massage therapist shall use safe and functional coverage/draping practices during the practice of massage when the client is disrobed; one violation of OAR 334-010-0025(4), A Licensed massage therapist shall not perform or offer to perform any services for clients other than those connected with giving massage therapy treatments as defined in ORS 687, unless the LMT has additional training and/or licensure; and one violation of OAR 334-030-0005(2)(a), LMT shall be accountable to his or her clients for the quality and effectiveness of care and services and for creating the basic conditions and boundaries necessary to foster safety and trust in the client-professional relationship; OAR 334-030-0005(2)(b), LMT shall plan and provide care and services to the best of his or her abilities, in partnership with the client, based on client

needs; for a total civil penalty of \$2,500. **Second the Motion: Morin** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries.

h) Case TBA1 (1183) – Bennouri moved to issue a Letter of Concern. **Second the Motion: Morin** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries.

i) Case TBA2 (1186) – Bennouri moved to issue a Letter of Concern. **Second the Motion: Morin** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries.

j) Case 1128 – McMillin moved to defer this case to the June Board meeting, allowing the Executive Director or Board chair to contact the AAG for input on action. **Second the Motion: Fredrickson** In favor: Collier, Fredrickson, McMillin, Morin and Calise. **Abstained: Bennouri** **Opposed: None.** Motion carries.

k) Case 1138 – McMillin moved to reject the settlement proposal. **Second the Motion: Morin** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries.

l) Case 1150 – Collier moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), practicing or purporting to be in the practice of massage without a license; and one violation of ORS 687.021(2)(a), advertising massage without a license, for a total civil penalty of \$1,500. **Second the Motion: Bennouri** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries.

m) Case 1168 – Bennouri moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging or purporting to be in the practice of massage without a license; and seven violations of ORS 687.021(2)(a), advertising massage without a license; for a total civil penalty of \$7,500 and forward to the District Attorney for prosecution consideration. **Second the Motion: Morin** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries.

n) Case 1169 – Bennouri moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging or purporting to be in the practice of massage without a license; and six violations of ORS 687.021(2)(a), advertising massage without a license; for a total civil penalty of \$6,500 and forward to the District Attorney for prosecution consideration. **Second the Motion: Morin** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries.

o) Case 1172 – Morin moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging or purporting to be in the practice of massage without a license; and one violation of ORS 687.021(2)(a), advertising massage without a license; for a total civil penalty of \$1,500 and forward to the Oregon Board of Cosmetology. **Second the Motion: Fredrickson** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries.

p) Case 1173 – Fredrickson moved to defer this case to the June meeting for Board appearance. **Second the Motion: Morin** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries.

q) Case 1184 – Fredrickson moved to defer this case to the June meeting for Board appearance. **Second the Motion: McMillin** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries. The applicant will be asked to provide letters of reference from non-family support persons, provide evidence of compliance with or completion of treatment program and clarify if the applicant is seeking active or inactive status.

r) Executive Session Closed Case Report – Collier moved to accept the executive session closed case report. **Second the Motion: Fredrickson** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries.

Case No. 609

Allegation: Sexual abuse of a client **Closed:** Unable to substantiate

Case No. 789

Allegation: Professional misconduct **Closed:** Unable to substantiate

Case No. 800

Allegation: Professional misconduct **Closed:** Based on further review

Case No. 808	
Allegation: Unlicensed practice	Closed: No violation found
Case No. 890	
Allegation: Professional misconduct	Closed: Unable to substantiate
Case No. 897	
Allegation: Professional misconduct/ Scope of practice	Closed: No violation found
Case No. 908	
Allegation: Other	Closed: Compliance met.
Case No. 922	
Allegation: Sexual abuse of a client	Closed: Unable to substantiate
Case No. 1037	
Allegation: Unlicensed practice	Closed: Duplicate case
Case No. 1047	
Allegation: Other	Closed: Board lacks jurisdiction
Case No. 1049	
Allegation: Professional misconduct	Closed: No violation found.
Case No. 1107	
Allegation: Unlicensed practice	Closed: Respondent unreachable
Case No. 1112	
Allegation: Sexual impropriety	Closed: Letter of concern
Case No. 1129	
Allegation: Unlicensed practice	Closed: Compliance met
Case No. 1130	
Allegation: Unlicensed practice	Closed: Respondent unreachable
Case No. 1133	
Allegation: Competency concerns	Closed: No action taken
Case No. 1135	
Allegation: Sanitation	Closed: Compliance met
Case No. 1137	
Allegation: Noncompliance with an existing Board order	Closed: Compliance met
Case No. 1143	
Allegation: Failure to disclose adverse action	Closed: Compliance met

Case No. 1151

Allegation: Unlicensed practice Closed: Respondent unreachable

Case No. 1156

Allegation: Unlicensed practice Closed: Compliance met

Case No. 1157

Allegation: Unlicensed practice Closed: No violation found

Case No. 1158

Allegation: Unlicensed practice Closed: No violation found

Case No. 1159

Allegation: Unlicensed practice Closed: No violation found

Case No. 1170

Allegation: Professional misconduct Closed: Compliance met

Case No. 1171

Allegation: Other Closed: Allegations withdrawn

Case No. 1180

Allegation: Professional misconduct Closed: Not a Board issue

11) **Public Session Action**

a) **Public Session Closed Case – Morin moved** to accept the public session closed case report. **Second the Motion: Collier** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries

Case No. 860

Shalyn Newman

Allegation: Unlicensed practice Closed: Final order issued

Case No. 1139

Crystal Jensen

Allegation: Other Closed: Stipulated agreement issued

Case No. 1155

Chandel Paige

Allegation: Other Closed: Stipulated agreement issued

12) **Public Forum** – Opportunity to share thoughts that pertain to agenda items – maximum of 30 minutes – There was no public in attendance.

13) **Rules Vote** – **Bennouri moved** to accept the rules changes as submitted and noticed. **Second the Motion: McMillin** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries.

14) **Announcements** – Calise reminded the Board that there would be a dinner at 5:30 and the meeting would reconvene at 8:00 am for the work session.

Adjourn Meeting – **Bennouri moved** to adjourn the meeting at 3:30 pm. **Second the Motion: Morin** In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. **Opposed: None.** Motion carries.

DAY TWO

Reconvene – Calise called the work session to order at 8:08 am.

15) Impaired Providers, Monitoring -

a) **Peer Supervision Policy - Coffey** indicated that there was confusion on how the Board was going to move forward with impaired providers and peer supervision. This has become an issue after there was legislative intervention as a result of another health regulatory agency failing to appropriately address health care practitioners, resulting in harm to patients.

At that time, the Governor attempted to remove the Executive Director of that agency, but was unable to as he did not have the authority. This is why the Governor now has the authority to remove the Executive Director of any health regulatory agency as he sees fit.

As a result of the failed public protection, the legislature created an impaired providers program under the Oregon Health Authority. However, it is very costly for small agencies to participate. In addition, agencies attempting to create their own monitoring program could find themselves in conflict with the Oregon Health Authority. Because of this, the Board needs to revisit how they will address applicants or licensees as impaired providers. Without performance matrixes or rules in place, there is concern that there could be potential problems in the future. If the Board desires to monitor licensees with substance abuse problems, they will need to have a program in place. Currently the Board utilizes requirements of AA or 12-step programs and peer supervision, without any specific rules in place. There is a cost to both the Licensee and the agency, for participation in the Oregon Health Authority substance abuse program. It would be approximately \$23,000 annually for the agency, and the cost is based on the number of licensees each agency regulates. It is thought that more agency participation may drive costs down.

Per ORS 676.185(2) "Impaired professional" means a licensee who is unable to practice with professional skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability or by reason of a mental health disorder.

McMillin voiced concern that the small number of impaired providers that the OBMT has addressed does not justify an expense of \$23,000 per year. The Board currently has a policy for peer supervision which leaves flexibility, but programs such as AA, NA, GA and others are voluntary and do not have a structure for tracking and maintaining attendees.

The current Board Peer Supervision Policy is as follows:

Place Licensee on probation and peer supervision, pursuant to ORS 687.081(1) & (2), for a period of two (2) years from the date of the fully executed Final Order.

Licensee shall complete 10 supervised visits by a licensed massage therapists, who is approved by the Board. Licensee must demonstrate to the peer supervisor during those visits that Licensee is competent and taking appropriate actions for the health, safety, and welfare of clients and the public, including, but not limited to: demonstrating that Licensee's practice of massage is within the scope of recognized massage techniques for which Licensee has been trained and demonstrating, and showing appropriate boundaries.

The peer supervisor shall not visit Licensee more than once per week.

During each visit, the peer supervisor shall supervise Licensee's practice of massage with a client for not less than one hour.

Licensee shall provide the peer supervisor access to records that the peer supervisor considers necessary to adequately supervise Licensee.

The peer supervisor shall keep a detailed written record of each visit and, after each visit, shall provide the Board with a report, which shall address the issues relating to Licensee's probation, above.

Licensee shall pay all costs, fees, and other expenses related to this peer supervision;

There was a great deal of discussion on trying to determine what other small agencies do in these circumstances. **Coffey** will research other agencies and determine how they address the use of peer supervision and substance abuse issues.

16) ORS 687 Review & Proposed Statute Changes – The Multiple Discipline Task Force provided suggestions and comments to the Board to consider when revising statutes. **Bennouri** reported that the Board brought forth suggested changes during the 2007 and 2009 legislative sessions, at the request of the Governor's office. Both attempts failed. Since that time, the Board Chair and Executive Director have attempted to mend relationships with the legislature prior to addressing any further legislative concepts. **McMillin** stated that he feels that **Calise** and **Coffey** have done an excellent job in reaching out to members of the legislature and in keeping communication open and honest.

17) Strategic Planning - The Board discussed, at length, their suggestions for Board direction. Board members were asked to provide feedback on desired short-term goals and desired long-term goals. The following is a list of those desired goals:

Short Term (one year):

- Stabilization – maintain relationships with the legislature, committees, each other
- Committee Clarification – structures of committees and Board liaison role
- Communication Plan - Develop training for Board members on how to speak with legislators
- Inclusion of any restrictions printed on the license
- Disciplinary action on the web site, tied to the licensee
- Practice or modality printed on license if desired by licensee
- Advanced technique listing service for a fee
- Policy on advanced techniques
- Board member handbook
- Update Board by-laws
- Rulemaking as a result of SB 454
- Revise model curriculum
- Credentialing review process (formerly known as portfolio review process)
- Online renewals
- Professional resources listed on web site (i.e. sample intake form, sample ethics statement, sample consent form, etc.)
- Send full Board to FSMTB meeting in October 2011
- Standard civil penalty for failure to accurately report adverse action on renewal forms
- Review Oregon Practical Exam for applicability for current industry standards

Long Term (three – five years):

- Facilities licensing
- Tiered licensure
- Make multiple/continued violations of unlicensed practice of massage a felony
- More oversight of massage schools
- Approval of continuing education providers for a fee
- Reciprocity between states
- Continuing education arm of OBMT (Board sanctioned/presented CE classes on subjects such as draping, ethics, boundaries, communication, professional standards, etc.)
- Temporary license to allow an individual to practice while going through the examination and licensure process

Ongoing:

- Board member trainings
- Professional development for staff
- Schools outreach
- Membership with the FSMTB

a) **Mission Statement & Board Goals** – **Bennouri moved** to approve the mission statement as suggested by legal counsel. **Second the Motion: Morin. In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.** The new mission statement reads as follows:

The Oregon Board of Massage Therapists regulates and monitors the practice of massage therapy in Oregon. Its role is to balance public safety and the needs of Licensed Massage Therapists by developing, implementing and maintaining the standards of professional conduct and practice.

The Board moved into discussion on roles and direction of committees. **Bennouri moved** to disband the Multiple Discipline Task Force, reconstituting it as the Scope of Practice Committee, and invite the participants to apply to any committee that may interest them. **Second the Motion: Morin. In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**

The following committee structures, missions and tasks were suggested:

Education Committee: Lisa Garofalo as Chair, David **Fredrickson** as Board Liaison

Mission of the Committee: At the direction of the Board, evaluate and review educational requirements of OBMT certified classes or programs to ensure minimum competencies for licensees regulated by the OBMT.

Current Tasks: Model curriculum review (due Spring of 2012), Credentialing Review Process (due July 2011)

Exam Committee: No current Chair, No appointed Board Liaison

Mission of the Committee: At the direction of the Board, Evaluate content and scoring of the Oregon Practical Exam and evaluate the written examinations available on a periodic basis.

Current Tasks: None at this time.

Rules Committee - Michael Jordan as Chair, Heather **Bennouri** as Board Liaison

Mission of the Committee: At the direction of the Board, assist the Board with preparing the statement of need and fiscal impact statement when there are rules changes, and review rules and statutes for consistency of language and content.

Current Tasks: Fingerprinting rules

Scope of Practice Committee: Nick Chrones as Chair, Melanie **Morin** as Board Liaison

Mission of the Committee: At the direction of the Board, evaluate new and current practiced and modalities and how they relate to the Practice of massage.

Current Tasks: Determination of exemptions with passage of SB 454 (Due July 28, 2011)

It was determined that the committee information would be placed on the Board web site as well as in a document for the Board.

The Board discussed size caps for the committees and the process for being appointed to a committee. It was determined that an individual interested in a committee will complete a committee interest form and submit it to the Board (not to the committee) for consideration. There will be no maximum number of participants in a committee, though there will be a minimum requirement of three committee members for the examination committee and the rules committee and a minimum of five committee members for the education committee and scope of practice committee. It was noted that the Board liaison is not included in the minimum number of committee members and they are not a voting member of the committees.

18) Public Comments & Forum – Opportunity to share thoughts that pertain to agenda items - maximum of 60 minutes – There were no comments.

19) Adjourn Meeting – Bennouri moved to adjourn the meeting at 11:30 am. **Second the Motion: Morin. In favor: Bennouri, Collier, Fredrickson, McMillin, Morin and Calise. Opposed: None. Motion carries.**